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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,800	01/16/2004	Joel L. Johnson	ITW-14389	8275
44702	7590	09/06/2006		
OSTRAGER CHONG FLAHERTY & BROITMAN PC 250 PARK AVENUE, SUITE 825 NEW YORK, NY 10177			EXAMINER TAWFIK, SAMEH	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 09/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/759,800

Applicant(s)

JOHNSON, JOEL L.

Examiner

Sameh H. Tawfik

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 and 21-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11252005, 04152004, 02252007; 01162007.</u> | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Election/Restrictions*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-12 and 21-25, drawn to a re-closable bag, classified in class 383, subclass 61.2.
- II. Claims 13-20, drawn to a method of manufacture, classified in class 53, subclass unknown.
- III. Claims 26-28, drawn to an apparatus, classified in class 53, subclass unknown.

Inventions Group II and Group I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the product as claimed can be made by another materially different process such as joining the third and fourth portions of the web to an unformed bag.

Inventions Group III and Group I are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a materially different product or (2) that the product as claimed can be made by another and materially different apparatus (MPEP § 806.05(g)). In this case the product as claimed can be made by another and materially different apparatus which joins the third and fourth portions of the web to an unformed bag.

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Inventions Group II and Group III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process as claimed can be practiced by another and materially different apparatus or by hand.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Dennis Flaherty on August 21, 2006 a provisional election was made with traverse to prosecute the invention of Group II, claims 13-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-12 and 21-28 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 20 recites the limitation "the step of tack sealing" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pierre et al. (U.S. Patent No. 5,121,997).

Pierre discloses a method of manufacture comprising the following steps: (a) providing a zipper comprising interlocked first and second zipper strips (Figs. 2 and 3; via 32 and 34); (b) folding a length of a web along a fold line (Fig. 6); (c) joining a portion of a length of a first flange of said first zipper strip to a first portion of said length of said web (Fig. 5); (d) joining a portion of a length of a second flange of said second zipper strip to a second portion of said length of said web (Figs. 4 and 5), said first and second portions of said length of said web being on opposite sides of said fold line (Figs. 4 and 5); (e) cutting said joined lengths of said web and said zipper along first and second lines generally perpendicular to said first edge to form an individual shrouded zipper assembly that includes (Figs. 14 and 15; via severing station 94), (f) joining a third portion of said length of said web to a first portion of a pre-made bag that partly

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defines a mouth (Fig. 11-13); and (g) joining a fourth portion of said length of said web to a second portion of said pre-made bag that partly defines said mouth (Figs. 11-13).

Pierre does not disclose a slider to be mounted in the zipper. However, the use of such slider to be mounted on a bag zipper is old, well known, and available in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Pierre's zipper by having a slider mounted therein, as a matter of engineering design choice, in order to make it easier and faster controlling the process of opening and closing the zipper.

Regarding claims 14 and 15: Pierre does not disclose that step (b) is performed prior to steps (c) and (d) nor step (b) being performed subsequent to step (c) and prior to step (d). However, Pierre discloses all the claimed steps of b-d, but in different order.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Pierre's steps by arranging them in different sequence, as a matter of engineering design choice.

Regarding claim 16: forming a line of weakened tear (Fig. 2; via 31) resistance in the length of the web.

Regarding claim 17: further comprising the step of joining a pull bead (Fig. 2; via 30) to a fifth portion of the length of the web.

Regarding claim 20: the step of tack sealing the length of the web to the pre-made bag prior to steps (f) and (g), see for example (Figs. 2 and 3).

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***Conclusion***

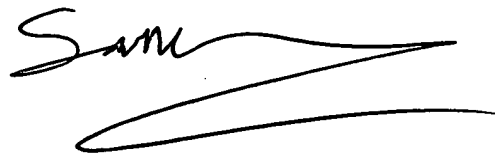
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sameh H. Tawfik whose telephone number is 571-272-4470. The examiner can normally be reached on Tuesday - Friday from 8:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sameh H. Tawfik  
Primary Examiner  
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ST.

A handwritten signature in black ink, appearing to read 'Sameh', followed by a long, sweeping horizontal line that extends to the right.